



## **DEPARTMENT OF TRANSPORTATION**

### **Federal Railroad Administration**

**[Docket No. FRA-2022-0049]**

### **Federal-State Partnership for Intercity Passenger Rail Program; Northeast Corridor Project Inventory**

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Notice of Proposed Approach (Notice) to the Northeast Corridor Project Inventory and the Federal-State Partnership for Intercity Passenger Rail Program for Northeast Corridor projects.

**SUMMARY:** FRA is publishing this Notice to describe its proposed approach to the development of the Northeast Corridor (NEC) project inventory (NEC Project Inventory), which is a required component of the Federal-State Partnership for Intercity Passenger Rail Program (Partnership Program). FRA is required to publish an NEC Project Inventory not later than one year after the enactment of the Infrastructure Investment and Jobs Act, also known as the Bipartisan Infrastructure Law (BIL). The NEC Project Inventory must be updated at least every two years.

**DATES:** Written comments on this Notice must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Comments should refer to docket number FRA–2022–0049 and be submitted at <https://www.regulations.gov>. See Section V for further information.

**FOR ADDITIONAL INFORMATION:** For additional information, please contact Amishi Castelli, Northeast Corridor Program Manager, Office of Policy and Planning, at

email: Amishi.Castelli@dot.gov or telephone: 202-845-4394, or Bryan Rodda, Lead Community Planner, Office of Policy and Planning, at email: Bryan.Rodda@dot.gov or telephone: 202-493-0443.

## **SUPPLEMENTARY INFORMATION:**

### **Table of Contents**

- I. Overview
  - A. Background on Northeast Corridor Planning
  - B. Authority
  - C. Definitions
- II. Eligibility
  - A. Applicant Eligibility
  - B. Project Eligibility
- III. NEC Project Inventory Development
- IV. Program Administration
  - A. NEC Project Inventory and Notice of Funding Opportunity Publication
  - B. Project Selections
  - C. Letters of Intent and Phased Funding Agreements
- V. Comments
- VI. Next Steps

### **I. Overview**

#### **A. Background on Northeast Corridor Planning**

The NEC is the most heavily used passenger rail corridor in the United States. Pre-COVID-19, the NEC served over 800,000 daily passengers traveling on more than 2,000 daily commuter and intercity trains and supported 50-60 daily freight trains.

In 2017, FRA presented its vision for growth along the NEC with the NEC FUTURE Record of Decision. *See* [www.fra.dot.gov/necfuture/tier1\\_eis/rod/](http://www.fra.dot.gov/necfuture/tier1_eis/rod/). The

Northeast Corridor Commission (NEC Commission), composed of 18 members, including representatives from each of the eight Northeast Corridor states, the District of Columbia, Amtrak, and the U.S. Department of Transportation, subsequently developed an implementation plan (CONNECT NEC 2035 or C35) to deliver the first 15-year phase of investment to realize the NEC FUTURE vision. The NEC Commission issued C35 in July 2021. C35 identified and provided a sequencing and delivery strategy for completing projects to eliminate the state of good repair backlog on—and modernize and make targeted improvements to—the NEC. *See* <http://nec-commission.com/connect-nec-2035/>. The NEC Commission is currently updating C35 to reflect the updated project information and better consider workforce and funding constraints.

## **B. Authority**

The Partnership Program was reauthorized and revised in the BIL, Title II, §§ 22106 and 22307, Pub. L. 117-58 (2021); codified at 49 U.S.C. 24911. Under the Partnership Program, the Secretary of Transportation (Secretary) is directed to develop and implement a program for issuing grants to applicants, on a competitive basis, to fund projects that reduce the state of good repair backlog, improve performance, or expand or establish new intercity passenger rail service, including privately operated intercity passenger rail service if an eligible applicant is involved. The Partnership Program revisions in the BIL require the Secretary to, among other things, develop and publish an NEC Project Inventory to (1) create a predictable project pipeline that will assist Amtrak, States, and the public with long-term capital planning, and (2) use the NEC Project Inventory when selecting projects located on the NEC for Partnership Program funds. 49 U.S.C. 24911. FRA is delegated the authority under the BIL to establish and administer the Partnership Program. 49 CFR 1.89(a).

FRA encourages NEC stakeholders to submit comments to this Notice consistent with the directions below. FRA will consider these comments in developing the NEC

Project Inventory and the associated Notice of Funding Opportunity (NOFO) for the Partnership Program. As described below, FRA plans to publish the NEC Project Inventory, consistent with the BIL, in November 2022, with the NOFO for projects on the NEC following closely after.

### **C. Definitions<sup>1</sup>**

*Construction Stage:* the Lifecycle Stage of a project following the Final Design Lifecycle Stage and during which the project is completely built and placed into operational use. This stage may include physical construction, procurement of vehicles and equipment, project administration, testing of equipment as appropriate, systems integration testing, workforce training, system certification, procurement of insurance, pre-revenue service, and start-up testing.

*Defined Capital Renewal Projects:* a geographically integrated set of activities to repair, replace, or modernize basic infrastructure assets along a corridor section that is executed in accordance with a defined scope, schedule, and budget. Basic infrastructure assets include rails, ties, ballast, communication systems, electric traction power systems, and undergrade bridges.

*Final Design Stage:* the Lifecycle Stage of a project following the Project Development Lifecycle Stage during which the project design is advanced to be ready for construction. This stage includes development of final engineering plans and specifications necessary for construction of the project; securing agreements (including execution of cost share agreements) necessary to construct and operate the project; and demonstration of commitment of the financial resources necessary to complete the project. This stage may include completion of property acquisition, and early

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<sup>1</sup> The definitions used in this Notice are consistent with FRA's Draft Guidance on Development and Implementation of Railroad Capital Projects, currently available for public comment at <https://www.regulations.gov> (docket number FRA-2022-0035). To the extent necessary, FRA will update definitions in the NOFO.

construction or relocations and procurement of equipment and materials, if permissible under applicable law.

*Improvement Projects:* those projects to improve reliability, increase capacity, reduce travel time, or improve the customer experience by replacing existing assets with superior ones or introducing new assets to existing NEC infrastructure, facilities, and equipment capabilities.

*Lifecycle Stage:* consecutive stages of a project as applicable, to include Project Planning Stage, Project Development Stage, Final Design Stage and Construction Stage. Each sequential stage involves specific project activities including the preparation of appropriate project management documents. FRA evaluates project readiness for a subsequent lifecycle stage when considering a project for funding.

*Major Backlog Projects:* those projects necessary to achieve a state of good repair, but that are not undertaken on a routine basis, such as rehabilitation or replacement of major bridges and tunnels. As with all capital projects, Major Backlog Projects involving replacement of a major structure should contemplate all work associated with that replacement as a single project. As of the publication of this Notice, the NEC Commission has identified Major Backlog projects on the NEC as:

1. Baltimore and Potomac Tunnel Replacement
2. Bush River Bridge Replacement
3. Connecticut River Bridge Replacement
4. East River Tunnel Rehabilitation
5. Gunpowder River Bridge Replacement
6. Pelham Bay Bridge Replacement
7. Susquehanna River Bridge Replacement
8. Cos Cob Bridge Replacement
9. Devon Bridge Replacement

10. Saugatuck River Bridge Replacement
11. Walk Bridge Program
12. Hudson Tunnel Project
13. Sawtooth Bridges Replacement Project
14. Portal North Bridge Project
15. Highline Renewal and State of Good Repair

*Major Capital Project:* a project with an estimated Total Project Cost equal to or greater than \$300 million and has, or is anticipated to request, \$100 million or more in Federal financial assistance.

*Stations Projects:* those projects to repair, replace, modernize or improve an existing station, occurring primarily within the boundaries of the station property, or projects to construct an expanded, new or replacement station.

*Northeast Corridor:* the main rail line between Boston, Massachusetts and the District of Columbia; the branch rail lines connecting to Harrisburg, Pennsylvania, Springfield, Massachusetts, and Spuyten Duyvil, New York; and facilities and services used to operate and maintain the main and branch rail lines described above. 49 U.S.C. 24911(a)(3)<sup>2</sup>.

*Northeast Corridor Capital Investment Plan (NEC CIP):* the planning document developed by the NEC Commission pursuant to 49 U.S.C. 24904(b) and any subsequent updates to such document (available at <http://nec-commission.com/documents/>).

*Northeast Corridor Project (NEC Project):* a project located on, or in primary use for, the NEC, consistent with 49 U.S.C. 24911(d)(1).

*Northeast Corridor Service Development Plan:* the planning document developed by the NEC Commission pursuant to 49 U.S.C. 24904(a) and any subsequent updates to

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<sup>2</sup> While other definitions for the NEC exist, this definition is used in the Partnership Program and is consistent with definition used in 49 U.S.C. 24904(e).

such document or associated analyses. As of the time of this Notice, the existing Northeast Corridor Service Development Plan is known as CONNECT NEC 2035.

*Planning Studies:* those projects which include only planning activities such as railroad transportation market forecasting, operations analysis, fleet planning, cost analysis, station and facility planning, environmental resource consideration, and other similar activities. Planning studies have no associated construction in their current form. Planning Studies only have one Lifecycle Stage, the Project Planning Stage.

*Project Development Stage:* the Lifecycle Stage of a project, following the Planning Stage, during which project design, environmental and other studies are advanced to ensure the project is ready for implementation. This stage includes completion of the environmental review process required under the National Environmental Policy Act (NEPA) and other related environmental laws, and advancement of the permitting processes as appropriate; completion of preliminary engineering and other design disciplines to develop estimates of risk, costs, benefits, and impacts, and sufficient to advance to Final Design; and identification of financial resources necessary to complete the project.

*Project Planning Stage:* the Lifecycle Stage of a project during which project concepts are identified to adequately address transportation needs and opportunities. The purpose of the Project Planning Stage is to identify and compare the costs, benefits, and impacts of project options as a means of providing private and government decisionmakers with information to reach transportation solutions. This stage includes the following activities to demonstrate a practical project proposal that addresses a clear project need and support of participant stakeholders: development of conceptual design to establish the type and scope of capital improvements to be made; advancement of technical studies (e.g., railroad transportation market forecasting, operations analysis, etc.); and engagement of stakeholders and the public as appropriate.

*Project Sponsor:* the entity responsible for implementing a project that may also be an applicant seeking or grantee receiving Federal financial assistance.

*Project Type:* a categorization as either Major Backlog Projects, Defined Capital Renewal Projects, Improvement Projects, Stations Projects, or Planning Studies.

*Shared Benefit Projects:* projects that benefit both intercity and commuter rail services.

*Total Project Cost:* the aggregate estimated cost for all remaining Lifecycle Stages in year-of-expenditure dollars that accounts for inflation and appropriate contingency amounts.

## **II. Program Eligibility**

### **A. Eligible Applicants**

The following entities are eligible to submit applications for Partnership Program funds: a State (including the District of Columbia); a group of States; an Interstate Compact; a public agency or publicly chartered authority established by one or more States; a political subdivision of a State; Amtrak, acting on its own behalf or under a cooperative agreement with one or more States; a Federally recognized Indian Tribe; or any combination of these entities.

The following is a non-exhaustive list of potential eligible Project Sponsors for NEC Projects:

- States, including the District of Columbia, Maryland, Delaware, Pennsylvania, New Jersey, New York, Connecticut, Rhode Island, and Massachusetts;
- Public agencies or publicly chartered authorities established by one or more States, including the Maryland Transit Administration, Southeastern Pennsylvania Transportation Authority, New Jersey Transit Corporation, New York Metropolitan Transportation Authority, and Massachusetts Bay Transportation Authority; and
- Amtrak (formally known as the National Railroad Passenger Corporation).



In addition to the list above, other existing or future entities whose applications demonstrate that they satisfy the eligible applicant criteria may apply for—and potentially receive—Partnership Program funding.

## **B. Eligible Projects**

For a project to be eligible for NEC Partnership Program funding, a project must be an NEC Project and be included on the NEC Project Inventory consistent with 49 U.S.C. 24911(c). Under 49 U.S.C. 24911(c), the following projects, including acquisition of real property interests, are eligible to receive grants under the Partnership Program:

(1) A project to replace, rehabilitate, or repair infrastructure, equipment, or a facility used for providing intercity passenger rail service to bring such assets into a state of good repair;

(2) A project to improve intercity passenger rail service performance, including reduced trip times, increased train frequencies, higher operating speeds, improved reliability, expanded capacity, reduced congestion, electrification, and other improvements, as determined by the Secretary;

(3) A project to expand or establish new intercity passenger rail service;

(4) A group of related projects described in paragraphs (1) through (3); and

(5) The planning, environmental studies, and final design for a project or group of projects described in paragraphs (1) through (4).<sup>3</sup>

Consistent with these requirements and the prohibition at 49 U.S.C. 22905(f)<sup>4</sup>, NEC Projects that solely benefit commuter rail passenger transportation are not eligible to receive Partnership Program funding and will not be included in the NEC Project

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<sup>3</sup> Applications for these activities under this eligibility category will be considered independently, regardless of whether the application also requests project funding for subsequent Lifecycle Stages such as Final Design Stage and Construction Stage.

<sup>4</sup> Under 49 U.S.C. 24911(i), Partnership Program grants are subject to the conditions in 49 U.S.C. 22905.

Inventory, even if such projects are included in the NEC CIP or C35. Partnership Program projects must result in reasonable investments for intercity rail passenger transportation. Such projects may be located on shared corridors with commuter rail passenger transportation and may benefit both intercity and commuter services. In this Notice, such projects are referred to as Shared Benefit projects. NEC Projects may also benefit freight rail service.

### **III. NEC Project Inventory**

FRA's development of the NEC Project Inventory will be consistent with the requirements of 49 U.S.C. 24911(e).

FRA views the NEC Project Inventory as a logical outgrowth of the collaborative planning efforts and project pipeline development work completed as part of the NEC Commission's C35 and NEC CIP. In developing the NEC Project Inventory, FRA will rely in large part on C35, analyses and new information considered in updates to C35, and the NEC CIP (collectively referred to in this Notice as NEC Commission Planning Documents). FRA intends to rely on the best available information from these sources as of August 2022 to inform the first NEC Project Inventory. FRA will not accept requests from eligible entities to add their projects to the NEC Project Inventory, but rather FRA seeks public comment on the approach in developing the NEC Project Inventory via this Notice.

Following initial publication of the NEC Project Inventory, FRA will update it every two years at minimum, consistent with 49 U.S.C. 24911(e).

#### **A. FRA's Approach to Developing the NEC Project Inventory**

This section describes FRA's interpretation of each of the NEC Project Inventory requirements from § 24911(e). FRA will develop an inventory that:

**(1) Identifies capital projects for Federal investment, project applicants, and proposed Federal funding levels. 49 U.S.C. 24911(e)(1).**

The NEC Project Inventory will include NEC Projects in all Lifecycle Stages and identify Project Sponsors for each project. FRA will review the NEC Commission Planning Documents and other sources of project information as appropriate to identify projects for inclusion on the NEC Project Inventory and preliminarily assess project eligibility under the Partnership Program.

In general, each project FRA finds eligible for funding under the Partnership Program will receive an individual entry on the NEC Project Inventory summarizing the project's scope, schedule, and cost information. If Defined Capital Renewal Projects are still in development and therefore not specifically identified in NEC Commission Planning Documents or other sources of information at the time of publication of the NEC Project Inventory, the FRA may identify and allocate proposed funding in the NEC Project Inventory for such projects that may become ready for funding after publication of the then-current NEC Project Inventory but prior to the next NEC Project Inventory update.

FRA will identify project applicants based on the Project Sponsor identified in the NEC Commission Planning Documents and other sources of project information as appropriate.

Proposed Partnership Program Federal funding levels for NEC Project Inventory projects may be described either in percentage levels (i.e., percentage of total cost comprising Partnership Program funding in the project) or amounts.

Section IVA of this Notice (Program Administration) discusses initially available funds for the Partnership Program, and states that proposed funding levels on the NEC Project Inventory are not commitments, selections, or obligations of Federal funding, and are subject to changes identified under Section IVB.

**(2) Specifies the order in which the Secretary will provide grant funding to projects that have identified sponsors and are located along the Northeast Corridor,**

**including a method and a plan for apportioning funds to project sponsors for the two-year period, which may be altered by the Secretary, as necessary, if recipients are not carrying out projects in accordance with the anticipated schedule. 49 U.S.C. 24911(e)(2).**

*NEC Project Inventory Order*

FRA will specify the order of funding for the identified NEC Projects over a two-year period starting from the publication of the NEC Project Inventory. In specifying the order of funding, FRA will group projects on the NEC Project Inventory based on the project's anticipated start year for the lifecycle stage for which Project Sponsors are expected to request Partnership Program funding. FRA will allocate a small portion of Partnership Program funding to Planning Studies. FRA will then prioritize projects by Project Type and, within Project Type, by Lifecycle Stage,<sup>5</sup> as follows:

*First Priority*

Major Backlog Projects in the following order based on Lifecycle Stage: (1) Project Planning Stage (2) Project Development Stage; (3) Final Design Stage; and (4) Construction Stage;

*Second Priority*

Defined Capital Renewal Projects in the following order based on Lifecycle Stage: (1) Project Planning Stage (2) Project Development Stage; (3) Final Design Stage; and (4) Construction Stage;

*Third Priority*

Improvement and Stations Projects in the following order based on Lifecycle Stage: (1) Construction Stage; (2) Final Design Stage; (3) Project Development Stage; and (4) Project Planning Stage.

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<sup>5</sup> Within the NEC Project Inventory, FRA will consider allocating funding to multiple Lifecycle Stages.

Once projects have been prioritized, FRA will preliminarily assess readiness.<sup>6</sup> In assessing readiness for the anticipated start year, FRA will review the NEC Commission Planning Documents and other sources of project information as appropriate to understand the following information, which may vary in completeness based on Lifecycle Stage of the project:

*Lifecycle Stage:* The Project Sponsor's completion of prior Lifecycle Stage work;

*Environmental risk:* The project's environmental and permitting approvals, and likelihood of obtaining the any outstanding approval(s) affecting project obligation and completion;

*Technical capacity:* The Project Sponsor's capacity to successfully deliver the project in compliance with applicable Federal requirements; and

*Financial completeness:* For projects requiring funding for Lifecycle Stages beyond Project Development, the likelihood that sufficient financial resources are available to complete the project; for projects requiring funding for the Planning and Project Development Lifecycle Stages, the likelihood that sufficient financial resources are available to complete those Stages.

*Funding Shares:* For Shared Benefit projects, the proposed intercity passenger rail share, commuter rail share, and local share (if different from the combined intercity passenger rail share and commuter rail share) of the Total Project Costs.

FRA will also consider consistency with the United States Department of Transportation (USDOT) Strategic Goals. FRA will qualitatively determine, based on information in the NEC Commission Planning Documents and other sources of project information as appropriate, whether projects address the goals (described in detail at

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<sup>6</sup> FRA will confirm readiness as part of the evaluation and selection process conducted for applications received in response to the NOFO for the Partnership Program (*see* Section IVB).

<https://www.transportation.gov/dot-strategic-plan>) of safety, economic strength and global competitiveness, equity, climate and sustainability, transformation of the transportation system to serve current and future transportation challenges, and organizational excellence that advances the mission of the USDOT.

*Method and Plan for Apportioning Funds*

In the NEC Project Inventory, FRA will identify proposed allocations for identified projects over a two-year period from the date of publication of the Inventory. The NEC Project Inventory will also describe FRA's method and plan for making such allocations.

(1) For Major Backlog Projects that will begin or are anticipated to begin the Construction Stage prior to Federal fiscal year 2027 and are selected for an award under the Partnership Program's competitive process, FRA intends to allocate sufficient funding to pay a Federal share up to 80 percent of Total Project Costs. For such projects, using NEC Commission Planning Documents and other sources of project information as appropriate, FRA will identify: the amount of funding, if any, received or committed from another Federal financial assistance program; and, the amount of funding, if any, that a project sponsor has requested a Federal agency consider including as part of a Federal funding recommendation. FRA will then allocate Partnership Program funding based on the remaining Total Project Cost. FRA may use Letters of Intent or Phased Funding Agreements discussed in subsection IVC below for this purpose.

(2) For Defined Capital Renewal Projects and Planning Studies that are selected for an award under the Partnership Program's competitive process, FRA may allocate a Federal share up to 80 percent of Total Project Costs.

(3) For certain Station Projects and Improvement Projects that are selected for an award under the Partnership Program's competitive process, Project Sponsors may be required to provide a greater than 20 percent non-Federal match. Specifically, for these

projects, FRA will consider allocating the remaining Partnership Program funds commensurate with the intercity passenger rail benefits of the project.

As discussed in Program Administration (Section IV), proposed funding levels on the NEC Project Inventory are not commitments, selections, or obligations of Federal funding. The NEC Project Inventory identifies potential Projects and Project Sponsors expected to submit applications in response to the Partnership Program NOFO, and represents FRA's best understanding of the anticipated Partnership Program funding requests at the time of publication of the NEC Project Inventory. Award selections and award amounts may differ from the allocations and projects identified in the NEC Project Inventory.

Inclusion on the NEC Project Inventory does not limit Project Sponsors' ability to pursue and receive Federal financial assistance through other programs. Projects receiving funding commitments from other programs will enable the Partnership Program to fund additional projects.

FRA anticipates that the NEC Project Inventory published in Fall 2022 will identify NEC Projects with an anticipated start year in calendar years 2023-2024 for the lifecycle stage for which Project Sponsors are expected to request Partnership Program funding. Subsequent updates to the NEC Project Inventory will identify projects underway, projects with Letters of Intent or Phased Funding Agreements in effect, and NEC Projects ready for funding in the subsequent two-year periods.

#### *Alterations to the NEC Project Inventory*

FRA may alter the NEC Project Inventory as necessary if recipients are not carrying out projects in accordance with the anticipated schedule. Such changes will be incorporated into subsequent updates to the NEC Project Inventory.

**(3) Takes into consideration the appropriate sequence and phasing of projects described in the Northeast Corridor capital investment plan developed**

**pursuant to § 24904(b); and is consistent with the most recent Northeast Corridor service development plan update described in § 24904(a). 49 U.S.C. 24911(e)(3)-(4).**

FRA will rely on the NEC Commission Planning Documents when developing the NEC Project Inventory. To the greatest extent feasible, FRA will ensure consistency between the NEC Commission Planning Documents and the NEC Project Inventory, directly incorporating information provided in the NEC Commission Planning Documents into the NEC Project Inventory. Such information may include sequencing and phasing project information, if available, as well as project names, Lifecycle Stage, Total Project Cost, project descriptions and scope, proposed start and end dates, and similar information.

**(4) Takes into consideration the existing commitments and anticipated Federal, project applicant, sponsor, and other relevant funding levels for the next 5 fiscal years based on information currently available to the Secretary. 49 U.S.C. 24911(e)(5).**

For a project identified on the NEC Project Inventory, FRA will identify, using NEC Commission Planning Documents and other sources of project information as appropriate, the amount of Federal funding, if any, that a project sponsor has received, or has requested a Federal agency consider including as part of a Federal funding recommendation, for all or a portion of Total Project Costs from non-Partnership Program funding. FRA will then allocate available Partnership Program funding based on the remaining amounts necessary to complete the project or project Lifecycle Stage(s). For example, if an NEC Project included on the NEC Project Inventory has received an award from another Federal source (e.g., a USDOT modal agency or non-USDOT source), FRA would allocate Partnership Program funds solely to the unfunded remainder.



Unless specifically provided for in law, funding from other Federal programs counts toward the not-to-exceed 80 percent Federal share maximum for any project receiving Partnership Program funds. For example, if a project with a \$100 million Total Project Cost receives a \$20 million award from the Federal Transit Administration, FRA's Partnership Program contribution would be capped at \$60 million to ensure the total Federal share from all Federal sources does not exceed 80 percent of the Total Project Cost.

**(5) Is developed in consultation with the Northeast Corridor Commission and the owners of Northeast Corridor infrastructure and facilities. 49 U.S.C. 24911(e)(6).**

This Notice is one component of FRA's consultation process with the NEC Commission and owners of NEC infrastructure and facilities. This Notice also permits interested industry and public sector entities and the public to comment on FRA's proposed approach to the NEC Project Inventory (*see* Section V). FRA's goal in publishing this Notice is to provide transparency about FRA's approach to developing the NEC Project Inventory, consult with the NEC Commission and the owners of the NEC infrastructure and facilities as required under 49 USC 24911(e)(6), and ultimately maximize efficiency and deliver the greatest benefits in implementing the Partnership Program for NEC Projects.

#### **IV. Program Administration**

##### **A. Publication of NEC Project Inventory and Notice of Funding Opportunity**

FRA will publish the NEC Project Inventory no later than November 15, 2022, and not less often than every other year thereafter. Projects and allocations in the NEC Project Inventory are not funding commitments and Project Sponsors must proceed through a competitive grant process and be selected for funding. Following publication

of the initial NEC Project Inventory, FRA will publish a NOFO soliciting applications for eligible projects identified on the NEC Project Inventory. FRA intends to simplify the application solicitation where possible to both leverage the substantial information included in the NEC Project Inventory and the NEC Commission's Planning Documents, and to reduce application burden on Project Sponsors. The NOFO will describe the Program's requirements, the evaluation and selection criteria that each application will be expected to address, and outline the broader USDOT goals that selections made under this Program will help contribute towards. Additional information, such as the required documentation that will be included for a streamlined application package, will be further articulated in the NOFO. FRA also intends to streamline the selection and obligation process.

The NOFO is anticipated to make funds available that are appropriated in the Consolidated Appropriations Act, 2022, Pub. L. 117-103 and in Title VIII of the BIL, and any additional funding available at the time the NOFO is issued, such as fiscal year 2023 appropriations. Such annual appropriations may have different funding restrictions and requirements than currently available funding. If applicable, these differences will be summarized in the NOFO. Grantees must comply with all applicable Consolidated Appropriations Act, 2022, and other relevant requirements.

## **B. Project Selections**

FRA will make project selections for Partnership Program funding consistent with the NEC Project Inventory, unless when necessary to address materially changed infrastructure or service conditions, changes in Project Sponsor capabilities or commitments, or other significant changes since the completion of the most recently issued NEC Project Inventory. Variation in amounts allocated on the NEC Project Inventory and the amounts requested in Partnership Program applications and selections

may result in FRA updating the NEC Project Inventory more frequently than every two years.

Materially changed infrastructure or service conditions may result from external events such as natural disasters or pandemics, or events such as asset failures or loss of functionality that sever or impede normal infrastructure and service conditions.

Changes in Project Sponsor capabilities or commitments may include changes to fiscal capacity or organizational resources that limit or expand a Project Sponsor's ability to implement projects on the NEC Project Inventory.

Other significant changes may include a project receiving funding from other Federal or non-Federal sources that changes the project's need for Partnership Program funding, future Congressional direction, or projects that achieve (or fail to achieve) expected readiness milestones earlier (or later) than anticipated at the time the most recent NEC Project Inventory was issued.

#### *Evaluation and Selection Process*

FRA will review and evaluate applications received in response to the NOFO for consistency with the NEC Project Inventory, eligibility, and completeness. Ineligible and incomplete applications and applications for projects that are not on the NEC Project Inventory will not be evaluated for selection. Project Sponsors of rail projects who are ineligible to receive Partnership Program funding, who are not selected for Partnership Program funds, or who receive less than the requested Partnership Program funding amount, are encouraged to consider other FRA and Departmental grant programs which are found at <https://railroads.dot.gov/grants-loans/competitive-discretionary-grant-programs/competitive-discretionary-grant-programs> and <https://www.transportation.gov/grants>.

FRA intends to evaluate applications by taking into account the following factors:

- Proposed amount and commitment of non-Federal match and/or other Federal funds;

- Factors indicating project readiness for funding:

*Lifecycle Stage:* FRA will assess the applicant's completion of prior Lifecycle Stage work;

*Environmental risk:* FRA will assess the project's environmental and permitting approval(s) and likelihood of any outstanding approval(s) affecting project obligation or completion;

*Technical capacity:* FRA will assess the applicant's capacity to successfully deliver the project in compliance with applicable Federal requirements;

*Financial completeness:* FRA will assess identified financial resources necessary to complete the project. For a Project where an applicant is requesting funding for the Final Design and/or Construction Lifecycle Stages of projects, FRA will assess demonstration of commitment of the financial resources through the completion of the project.

- Consistency with Strategic Goals: FRA will assess, via a review of quantitative and/or qualitative metrics as appropriate, the extent to which a project achieves outcomes consistent with the following Strategic Goals (further detail at <https://www.transportation.gov/dot-strategic-plan>), to include safety, economic strength and global competitiveness, equity, climate and sustainability, transformation of the transportation system to serve current and future transportation challenges, and organizational excellence that advances the mission of the Department of Transportation.

FRA will make NEC Project selections or project component selections for Partnership Program funding consistent with the priority in the NEC Project Inventory as

required under 49 U.S.C. 24911(d)(1)(A). Selected project scope, schedule and costs may vary from the NEC Project Inventory as a result of specific funding requests, detailed and updated application submissions, and FRA's assessment of the evaluation factors described above. Variation in amounts allocated on the NEC Project Inventory and the amounts requested in Partnership Program applications and selections may result in FRA updating the NEC Project Inventory more frequently than every two years.

#### *Shared Benefit Projects*

Shared Benefit Projects are eligible for Partnership Program funding. In evaluating applications for such projects, FRA will consider if the proposed project would be a reasonable investment in intercity passenger rail transportation separate from consideration of the proposed project's benefits to commuter railroad passenger transportation. FRA anticipates a substantial number of Shared Benefit projects will be included in the NEC Project Inventory since a majority of the NEC territory has shared operation, and thus resulting benefits, between intercity and commuter services.

For Shared Benefit Projects, FRA will only make such selections when Amtrak and the public authorities providing commuter rail transportation at the eligible project location:

- (1) Are in compliance with 49 U.S.C. 24905(c)(2);

- (2) Have identified funding for the intercity passenger rail share, the commuter rail share, and the local share of the eligible project before the commencement of the project in applications responsive to the NOFO. Development of the appropriate funding shares is the responsibility of the Project Sponsor in coordination with its project partners;

- (3) Have demonstrated a fair allocation of financial responsibility between intercity and commuter rail transportation. For this purpose, Project Sponsors will be asked to provide in their applications a breakdown of the Total Project Cost and costs

previously incurred (including for previous Lifecycle Stages) identified by funding source and provider. FRA will consider such costs in determining whether there has been a fair allocation of financial responsibility between intercity and commuter rail transportation.

#### *Non-Federal Match*

The Partnership Program requires, at 49 U.S.C. 24911(f)(2), that the Federal share of Total Project Costs for a project shall not exceed 80 percent.<sup>7</sup> The NOFO will state FRA's willingness to fund projects up to the 80 percent maximum Federal share of the Total Project Costs. Project Sponsors and their project partners will be responsible for a minimum 20 percent non-Federal share for Partnership Program grants. Consistent with Section IIIA of this Notice, FRA will expect Project Sponsors to propose a greater than 20 percent local match for certain Improvement and Station Projects and project components.

Total Project Costs shall be based on the best available information, including engineering studies, studies of economic feasibility, environmental analyses, and information on the expected use of equipment or facilities. FRA believes the NEC Commission Planning Documents are among the best available information and will use those documents and other sources of project information as appropriate when validating Total Project Costs estimates.

#### **C. Letters of Intent and Phased Funding Agreements**

A Letter of Intent (LOI), authorized at 49 U.S.C. 24911(g)(1), is a letter from FRA to a grantee announcing "an intention to obligate" an amount to its project from future budget authority. LOIs are contingent commitments and not binding obligations of

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<sup>7</sup> In an apparent drafting error, 49 U.S.C. 24911(f)(2) states the Federal share "shall not exceed 80 percent, except as specified under paragraph (4)" of part (f), however no such paragraph (4) exists. FRA's interpretation of this language is that all Partnership Program projects are subject to the "shall not exceed 80 percent" requirement specified in 49 U.S.C. 24911(f)(2).

the Federal government. LOIs demonstrate FRA's intent to provide future Final Design and Construction Lifecycle Stage funding for Major Capital Projects assuming successful completion of Project Planning and Project Development Lifecycles for the project. FRA anticipates issuing LOIs primarily to projects currently in, or beginning, the Project Development Lifecycle Stage. In issuing the LOI, FRA may outline conditions and/or define readiness thresholds which the grantee may use to inform future funding requests for Partnership Program funds.

A Phased Funding Agreement (PFA), authorized at 49 U.S.C. 24911(g)(2), is an agreement associated with the obligation of an initial grant award under the Partnership Program. FRA may enter into a PFA with a Project Sponsor if:

(1) the project is highly rated, based on the evaluations and ratings described in the Partnership Program NOFO and as conducted by FRA, and

(2) the Federal assistance to be provided for the project under the Partnership Program is more than \$80 million.

FRA may consider additional factors in determining whether a PFA is the appropriate funding approach for a project. A PFA shall:

(1) establish the terms of participation by the Federal Government in the project;

(2) establish the maximum amount of Federal financial assistance for the project;

(3) include the period of time for completing the project, even if such period extends beyond the period for which Federal financial assistance is authorized;

(4) make timely and efficient management of the project easier in accordance with Federal law; and

(5) if applicable, specify when the process for complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and related environmental laws will be completed for the project.

FRA will evaluate projects that meet the aforementioned requirements and consider if a PFA is an appropriate funding approach for a project. FRA anticipates limiting the use of PFAs to projects that are currently in, or beginning, the Final Design and/or the Construction Lifecycle Stages. FRA expects to issue PFAs for Major Backlog projects ready for Final Design and/or the Construction Lifecycle Stages to reflect the higher priority placed on these projects by FRA (*see* Section IIIA), thus providing project sponsors a higher degree of certainty that Federal funds will be available to complete the project. PFAs are contingent commitments and are not financial obligations of the Federal government. However, unlike LOIs, PFAs are agreements relating to the obligation of future funds and FRA commits to provide funding as specified in the PFA for the duration of the project, as long as the grantee continues to meet the terms of the PFA and Congress appropriates sufficient Partnership Program funding for such purpose. For a project with a PFA, FRA may provide grant funding in phases consistent with the terms of the PFA and within the established maximum amount of Federal financial assistance for the project.

The NEC Project Inventory will not identify projects for LOIs or PFAs, as those determinations will be made based on applications during project selection. In response to the NOFO, applicants may identify and describe project phases or elements that could be candidates for subsequent Partnership Program funding and may request LOIs or PFAs for their projects, as appropriate. *See* 49 U.S.C. 24911(g) for detailed information on LOIs and PFAs.

## **V. Comments**

The purpose of this Notice is to provide transparency about FRA's proposed approach to developing the NEC Project Inventory, consult with the NEC Commission and the owners of the NEC infrastructure and facilities as required under 49 USC



24911(e)(6). FRA's proposed approach to the NEC Project Inventory and Partnership Program Implementation may change following consultation.

FRA encourages interested parties to submit a comment pertinent to the information in this Notice in docket number FRA-2022-0049, available at <https://www.regulations.gov>. Searches may be conducted by using the docket number and comments may be submitted by following the instructions provided. All comments will be due 30 days after the publication date of this Notice. All submissions must include docket number for this Notice. In order to facilitate comment tracking and response, we encourage commenters to provide their name.

While interested parties are not required to provide comments in the following areas, FRA is seeking targeted comment on the following specific areas:

(1) Information, if any, that may be missing or inaccurate if FRA relies primarily on the NEC Commission Planning Documents for project names, descriptions, sponsors, Lifecycle Stage, Project Type, start year, cost estimates, and other information, in addition to an explanation as to why the information was not included in NEC Commission Planning Documents.

(2) Other sources of information, if any, FRA should review for project information in preparing the NEC Project Inventory

(3) The proposal described in Section IIIA to allocate funds for Defined Capital Renewal Projects still in development at the time of publication of the NEC Project Inventory, but that may become ready for funding after publication of the NEC Project Inventory.

(4) The order, method, and plan for apportioning funds described in Section IIIA of this Notice.

(5) FRA's proposed use of Letters of Intent and Phased Funding Agreements permitted under 49 USC 24911(g) as described in Section IVC.

(6) Issues or concerns with the information FRA has provided in this Notice.

Notwithstanding the various forms of consultation, FRA advises that all comments should be submitted in writing to this notice to ensure proper consideration.

All comments received, including any personal information, will be posted without change to the docket and will be accessible to the public at <https://www.regulations.gov>. Do not include information in comments in the docket that should not be made public. Input submitted online via <https://www.regulations.gov> is not immediately posted to the site. It may take several business days before submissions are posted. Comments containing proprietary or confidential information may be submitted by contacting the agency for alternate submission instructions.

## **VI. Next Steps**

FRA will review comments upon the closing of the comment period for consideration in developing the NEC Project Inventory. FRA will publish the NEC Project Inventory in the Federal Register no later than November 15, 2022, which may include a high-level summary and responses to comments received. Following the publication of the NEC Project Inventory, FRA will publish a NOFO soliciting applications for NEC Projects listed on the NEC Project Inventory. FRA will then evaluate applications consistent with the NOFO. FRA will publish an NEC Project Inventory at least every two years following the initial publication.

Issued in Washington, D.C.

**Paul Nissenbaum,**

*Associate Administrator,*

*Office of Railroad Policy and Development.*

